



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Approved Minutes Zoning Board of Adjustment

November 10, 2015

7:30 pm @ Windham Town Hall

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mark Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Present			

Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Suzanne Whiteford, Minute Taker

Meeting called to order at 7:30 by Chairman Scholz

Case #30-2015 read into the record per Mr. Samsel

Lot 11-A-248, Case # 30-2015, continued from 9-22-2015

Applicant: KRD Builders

Owner: Ed Zabawski

Location: 7 Yorkshire Road

Zone: Rural, Wetland & Watershed Protection District (WWPD)

Variance relief from the following Sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the construction of a 26' x 65' free standing garage.

Section 601.3 to allow a garage to be constructed in the WWPD where none is allowed.

Section 702, App.A-1 to allow the garage to be 10 ft. from the side lot line where, 30 ft. is allowed.

A new set of plans distributed per Mr. Tim Lavelle from Lavelle associates which included an amendment to the original plan for a proposed botanical rain garden to mitigate water runoff from the garage.

Mr. Lavelle informed the ZBA the new set of plans are on file with the town and the Conservation Commission.

Mr. Lavelle informed the ZBA he is scheduled to present the plan to the Conservation Commission on Thursday November 12, 2015.

Chairman Scholz inquired about the total impervious coverage.

Mr. Lavelle responded the driveway is an additional 485 square feet.

Wayne Morris, Chairman Conservation Commission

Draft ZBA minutes November 10, 2015

Mr. Morris received applicant's plan just tonight. Mr. Morris explained to the ZBA that the applicant has missed two opportunities before the Conservation Commission to present the plan. Mr. Morris is in agreement to review the plan on November 12, 2015.

Chairman Scholz is concerned about the substantial size of the proposed garage. Chairman Scholz asked the applicant if it is option to move it further away from the lot line.

Mr. Zabawski (owner/applicant) responded to Chairman Scholz that he is unable to move the garage away from the lot line due to the topography. Mr. Zabawski explained that in addition to a challenging topography the proposed placement of the garage avoids any disturbance to WWPD.

Motion by Mr. Samsel to go into deliberation

Second by Mr. Partington

Vote 5-0-0

Motion carries

Mr. Samsel is concerned about granting variance conditioned on the approval of another board to be determined after the ZBA decision.

Mr. Partington reviewed the 5 variance criteria.

Mr. Partington is not comfortable in gauging water runoff, as presented, from a very large substantial building without Conservation Commission input.

Mr. Partington believes the plan meets the 5 variance criteria for the setback issue.

Mr. Partington is not convinced the plan meets the 5 criteria for the WWPD without conservation Commission input.

Mr. Samsel agrees with Mr. Partington. Mr. Samsel believes the case has already been continued and the opportunity for public weigh in is now and that the ZBA can make a decision based on what is in front of them.

Chairman Scholz believes the impervious runoff is not the issue. Chairman Scholz is concerned about the lot line. Chairman Scholz agrees with Mr. Partington regarding the Conservation Commission feedback. The proposal is a substantial request without complete information.

Ms. Skinner commented that she would prefer to continue the hearing with Conservation Commission input.

Mr. Breton commented that the applicant previously asked for the hearing to be continued based on Conservation Commission input; the applicant had opportunities to present the plan to Conservation Committee prior to tonight's scheduled hearing.

In consideration of the testimony presented, a motion was made by Mr. Breton to deny without prejudice Case # 30-2015 as presented

Second by Mr. Samsel

Board discussion about the motion to deny without prejudice versus a motion to continue.

After board discussion Mr. Breton made a motion to withdraw his motion

In consideration of the testimony presented, a motion was made by Mr. Breton to continue Case #30-2015 to November 24, 2015 to allow applicant time to present plan to Conservation

Commission and, time for ZBA to receive Conservation Commission feedback for consideration.

Second by Ms. Skinner

Vote 5-0-0

Motion carries

Case #37-2015 read into the record by Mr. Samsel

Abutter list was read into the record at the prior meeting.

Lot 21-H-14, Case #37-2015, continued from 10-13-2015

Owner/applicant: John G. & Cheryl A. Albert

Location: 19 Lake Shore Road

Zone: Residential A & Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land **Section 406.2** to allow an increase in volume from 35,238 cu. ft. to 74,589 cu. ft. and an increase in footprint from 1,642 sq. ft. to 3,252 sq. ft.

Robert Balquist, Engineering Technician, representing the owners. Mr. Balquist entered an email from Craig Day with the Shoreland Program into the record as exhibit A. Exhibit A is an email acknowledging receipt of applicant's revised plan, in Mr. Day's opinion the plan meets Shoreland requirements, and he anticipates Shoreland approval.

Mr. Balquist presented the 5 variance criteria for Case #37-2015.

Mr. Partington asked Mr. Balquist if he has a current floor plan.

Mr. Balquist does not have a revised floor plan. Mr. Balquist provided the Mr. Partington the original floor plan. The revised plan will show a decrease in the number of garage bays from 4 to 3 and a reduction in length by 12 feet.

Chairman Scholz opened the hearing for public comment.

No comments from the public.

Mr. Gregory requested that the applicant state the foot print size that is being requested.

Mr. Balquist responded the proposed Volume requested is 74589 cu feet

The requested Footprint is 3252 sq. feet

Motion to enter into deliberation by Mr. Samsel

Second by Mr. Breton

Vote 5-0-0

Motion carries

Mr. Partington acknowledged that the applicant has worked hard to meet the setback criteria.

Mr. Partington reviewed the 5 variance criteria and believes the applicant has met all 5 criteria.

In consideration of the 5 variance criteria and the testimony presented, a motion was made by Mr. Samsel to grant variance relief per plan submitted for Lot 21-H-14, Case #37-2015, from Section 406.2 of the Town of Windham Zoning Ordinance and Land to allow an increase in

volume from 35,238 cu. ft. to 74,589 cu. ft. and an increase in footprint from 1,642 sq. ft. to 3,252 sq. ft.

Second by Bretton

Vote 4-1-0 Ms. Skinner opposed, the overall footprint is too large, applicant does not meet variance criteria #5.

Motion carries

Case #38-2015 and the abutter list read into the record per Mr. Samsel

Lot 14-B-3425, Case # 38-2015

Owner/applicant – Robert Schenk

Location – 53 Castle Hill Road

Zone – Rural, Wetland & Watershed Protection District (WWPD)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to construct a 12 ft. x 24ft. shed.

Section 702, App. A-1 to allow the shed to be 11ft. from the side lot line where 30 ft. is required.

Owner/applicant Mr. Schenk presented Case #38-2015 and reviewed the 5 variance criteria.

Mr. Samsel asked Mr. Schenk to elaborate regarding the ‘only available’ location to place the shed.

Mr. Schenk responded the septic is on the right side of the property, a driveway runs down the left side of the property, the area behind the house is wooded area, and between the shed and the pool is a driveway. The shed as proposed will be 18 inches away from the driveway.

Chairman Scholz opened the hearing for public comment.

No comments from the public.

Motion by Mr. Bretton to go into deliberation

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Mr. Samsel believes the case as proposed meets the 5 variance criteria

Chairman Scholz and Mr. Partington agree with Mr. Samsel that the proposed plan meets the 5 variance criteria

In consideration of the 5 variance criteria and the testimony presented, a motion was made by Mr. Breton to grant variance relief per plan submitted for Lot 14-B-3425, Case # 38-2015 From Section 702, App. A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to construct a 12 ft. x 24ft. shed and to allow the shed to be 11ft. from the side lot line where 30 ft. is required.

Second by Mr. Samsel

Vote 5-0-0

Motion carries

Case #39-2015 and abutter list read into the record

Lots 17-G-6 & 17-G-20 Case #39-2015

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow more impervious surfaces than allowed.

Section 16.6.4.2 to allow the combined lots to be covered with impervious surfaces of 55.2 % where 30% is allowed.

Ryan Development presented Case #39-2015 and reviewed the 5 variance criteria

A color copy of the proposed plan was distributed and reviewed by the applicant.

Ms. Samsel asked the applicant to speak to the maintenance of the proposed porous surface.

Applicant responded that the proper installation and maintenance of the porous surface keeps it at optimal absorption and maintains its beauty.

Mr. Samsel inquired about the lifespan of the porous pavement.

Applicant responded that just like any pavement porous has a lifespan. Applicant did not have a specific time frame to offer.

Mr. Samsel asked the applicant how he knows when there is deterioration to the porous pavement.

Applicant responded the porous pavement will be monitored for cracks or other visual signs of deterioration. The areas that deteriorate will it will have to be replace.

Mr. Samsel asked why they are not proposing porous use on the parking lots.

Applicant agreed that he could implement more porous pavement into the plan for increased coverage with porous pavement

Chairman asked about the drainage of porous pavement and its impaired drainage due to lack of maintenance.

Applicant comprehensive maintenance plan will be implement and provisions within the plan can include routine inspection and refreshing the porous pavement for loss of permeability. Don't anticipate the entire porous pavement would fail; rather there would potentially be pockets that fail.

Mr. Samsel asked the applicant what the largest area of porous pavement he has worked with.

The applicant responded the largest area he has experience with is 2 acres.

The applicant is aware of a Lowes store constructed with porous pavement and it covered approximately 4 to 5 acres

Mr. Samsel asked about plans for septic.

Applicant responded they are working with the town and Pennichuck in planning a septic design to include off site septic.

Mr. Mazalewski has not seen a topographical plan for the site as proposed, specifically with regards to the mentioned 75 foot difference in elevations and changes.

Applicant the plan has not been fully designed with regards to topography. Committed to creating a post construction water flow in the direction it is going pre construction. Would consider diverting the flow in the southwest quadrant of the plan. That area would be brought into the discharges onto 111A.

Mr. Mazalewski asked how the applicant recharge site water into solid rock

Applicant attempt to mimics the drainage and recharge, fully profile the ledge, and develop a ledge profile to mimic the current condition.

Mr. Mazalewski inquired about the lot on range road. On the proposed plan, it looks undeveloped. Is it proposed to remain unaltered?

Applicant, Not all of it. Some sloping will need to be done to overcome existing topography. The existing house will be removed and there will be a comprehensive landscaping plan with transition into the residential.

Chairman Scholz opened the hearing for public comment.

Hilary Jordan, 30 Mountain Village Road

Resident for over 33 years.

The landscape has drastically changed over the past 33 years

There are small shopping plazas and new businesses.

Shaw's was a huge contribution to the community.

The development does not support the zoning change and the town needs the change to move forward.

Off exit 3 where the land is considered has a current gas station which is more concerning than the proposed development

In support of the development because it is based on evidenced based research and are being proactive rather than reactive.

The plan will produce jobs and revenues.

It's not a question of what but rather when. If not this plan, there will be a commercial project on the land.

Andrew Lane, 2 Woodview Road

In favor of the location

In need of a community centre

Concerned about the noise during construction

Concerned about the water supply and if Pennichuck can support it

Steve Koza, 20 Carr Hill Road

In favor of the project

Ideal property for this type of development

Resident for 13 years and this could offer tax relief

Jed Z. Callen, Esq.

BCM Environmental & Land Law, PLLC

Letter of written comments in opposition to variances reviewed and submitted into the file.

Mr. Partington asked if someone can speak to how it is calculated that the property is in the canobie and Cobbett's pond watershed protective district. Attorney Callen deferred his answer.

Mr. Gregory responded to Attorney's Callen statement regarding application error. The application Attorney Callen cited was not the current application. The current application is filed correctly. Attorney Callen agreed he cited the wrong (not current) application.

Derek Monson, 18 Turtle Pond Road
VP of Water Quality
Cobbett's Pond Improvement Association.
The DES delineates watershed maps which we adopted for the ordinance.
Read a letter of opposition to the request for variance into the record
Letter placed into Case #39-2015

Mr. Samsel asked Mr. Monson if he was involved in any of the discussions between you, the developer and the DES
Mr. Munson No, not contacted or involved

Renee L. Bourdeau
Geosyntec Consultants
Water resources Engineer
Read a letter in opposition to the request for variance into the record
Letter placed into Case # 39-2015 file
The porous pavement was used in the back parking lot of the Lowes referenced by the applicant and not plowed during the winter. The applicant is proposing the porous pavement for the main parking area of the plan. Has the applicant addressed surface ponding, if not the porous pavement will fail.

Chairman Scholz asked if the applicant got to 30% would Ms. Bourdeau still be opposed
Ms. Bourdeau would need more information from the applicant
Chairman has not yet asked where the snow removal will go. The reference made to Lowe's with porous pavement
Ms. Bourdeau commented it would depend on the asphalt design and further details to be able to answer the questions.

Mr. Samsel asked Ms. Bourdeau how degradation is measured
Ms. Bourdeau responded how it is measured and referred to Board to the DES publication of how it is measured.
Mr. Samsel asked Ms. Bourdeau how the number 30 % was decided.
Ms. Bourdeau replied the applicant needs to demonstrate
Chairman Scholz is clarifying that Ms. Bourdeau is being asked questions she cannot give an answer
Mr. Munson working with DES when the ordinance was written
Several studies were done and the 30% number was established and passed when the study was done when writing the ordinance.

William Schroeder, 14 Woodvue Road

President Canobie Lake Protective Association
Read a letter on behalf of the association
Letter placed into Case # 39-2015 file

Cathy Souter, 9 Rolling Ridge Road

If this is two parcels is the whole conversation mute?

There isn't a final plan, no proposed plan for septic and water.

Ms. Suter's neighbour built a house near Cobbett's pond and was told by Pennichuck 10 years ago there is no more water available (from Pennichuck). Where is the water coming from for this proposed development?

This isn't a final plan and new information was introduced

The law say 30%, the residents in the town voted for 30% and that is what the residents want it to stay

How can a variance be voted (granted) without a finalized plan.

Don't have any final plans in writing.

Norm Young, 1 Jordan Road

Vice President and Treasurer

Friends of Moeckel Pond

Represent friends of Moeckel Pond, a 501.c.3

Mr. Young read a letter of opposition "during a significant storm

Chairman Scholz asked how Mr. Young arrived at his calculations regarding the potential to raise the level of the pond nearly 2" during a significant storm.

Mr. Young reviewed his calculation methods.

Paul Moran, 18 West Shore Road

Invite the members to visit west shore road and range road, there is a culvert there failing

There is no sewer system in Windham.

If the numbers don't work, leave, we don't want you. (message intended for the applicant)

Chairman Scholz asked Mr. Moran if the failing culvert being addressed.

Mr. Moran responded he does not know if it is being addressed.

Tom Murray, 29 West Shore Road

A commercial general contractor, former ZBA member

Mr. Murray commented that upon review of the application, the ZBA can request a water and drainage study.

Mr. Murray supports economic development but not at the cost of the town.

The current degradation of Canobie Lake is ongoing.

The reason the state relocated the highway was due to conservation lawsuit filed against the DOT
Referred to a garage on Woodview road, is the WWPD overlay part of this application? If not, is the application incomplete?

Mr. Murray's comments including his review of the variance criteria:

- Abutting town was not listed in the abutter list. Was the town of Salem notified?
- The applicant is not meeting the spirit of the ordinance.

- No evidence submitted regarding property value.
- No special conditions or uniqueness to these two properties
- Does not meet the 5 variance criteria, request the ZBA reject the application.

Joan Welch, 56 Turtle Rock Road

Ms. Welch asked about the newer application regarding the 1300 feet from Cobbetts Pond.

Ryan Development stated they are 2500 feet from Cobbett's Pond.

Ryan Development did not attend the Conservation Commission meeting which they requested to be on the agenda.

Asking the ZBA to deny the variance because they do not meet the 30% impervious area criteria.

Wayne Morris, 14 Jordan Road

Speaking as a resident

Mr. Morris has an issue with the process being used for a development of this magnitude.

The plan should go through the planning board first.

The plan is lacking details, especially details with regards to water and sewer.

The ZBA needs a complete plan before making a decision.

The biggest project in the town of Windham is not going through a proper channels.

Mr. Samsel read the following correspondence in opposition to Case #39-2015 into the record:

1. Dated October 28, 2015 from The Windham Conservation Commission
2. Dated November 9, 2015 from Lynn Chrissis
3. Dated November 10, 2015 from Gail Sturtevant Souza was referenced and is available in the record for the public to read.
4. Dated November 10, 2015 from Franis and Alberta Baggett
5. Dated November 9, 2015 from Lisa Nikitas
6. Dated November 9, 2015 from Elizabeth Bondioli
7. Dated November 10, 2015 from Donna and Lenny Orlando
8. Dated November 9, 2015 from Vera Barone
9. Dated November 10, 2015 from Michael and Lucille Lomazzo
10. Dated November 9, 2015 from James. W Chrissis

Applicant wanted to clarify that he did not ask to be placed on the Conservation Commission agenda. They were notified of being placed on the Conservation Commission agenda and were not able to attend the hearing. The applicant requested a continuance to provide further details to the ZBA.

Mr. Breton believes the application should be continued.

Mr. Samsel does not believe being unprepared deserves a second chance. The ZBA should make a decision based on the information presented this evening.

Chairman Scholz agrees with Mr. Breton that a water and drainage study should be presented.

The applicant responded he is happy to present a water and drainage study completed by the consultant of their (ZBA) choosing.

Mr. Samsel believes the ZBA has heard testimony and the continuation was for the applicant we are here to determine whether we grant a variance. Advised the applicant he should have been prepared. Mr. Samsel further commented that the way this board typically operates, we look at the

application and listen to the testimony and make a decision in one night. It is not our practice to continue. The ZBA has the request and we will work with the request.

Chairman Scholz is fine with a continuation.

Mr. Partington commented that regional impact was mentioned, it is important to address if Salem needs to be notified. The lots are not being merged and it is a valid point how it should be presented. Mr. Partington commented that perhaps the ZBA should know the impervious on both lots.

Chairman Scholz agrees with Mr. Partington and asked Mr. Gregory to review the way the lots should be presented and if the plan is in the WWPDP.

Motion by Mr. Partington to continue the Case #39-2015 to January 26, 2016.

Second by Mr. Breton

Vote 3-2-0 Mr. Samsel and Ms. Skinner opposed. Mr. Samsel's reasons for opposition stated above, Ms. Skinner agrees with Mr. Samsel.

Motion passes

Lots 17-G-6 & 17-G-20 Case #40-2015

Applicant – Ryan Development

Owner – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

Location – 102 Indian Rock Road & 82 Range Road

Zone- Gateway Commercial District & Cobbett's Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow the occupiable space to be taller than allowed

Section 701.1 to allow the occupiable space of the proposed hotel to be 45 ft. where 35 ft. is allowed.

Motion by Mr. Breton to continue Case #40-2015 to January 26, 2015 per applicant's request.

Second by Mr. Samsel

Vote 4-1-0, Ms. Skinner opposed

Motion carries.

Motion by Mr. Samsel to adjourn

Second by Mr. Breton

Vote 5-0-0

Adjournment 11:42pm

Minutes submitted by Suzanne Whiteford, ZBA minute taker

Copies of all Zoning Board of Adjustment applications and materials are available for review at the Community Development Department; open Monday – Friday, 8 AM – 4 PM